

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 Broadway  
Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED AMENDMENTS TO PART 375 OF  
TITLE 6 OF THE OFFICIAL COMPILATION OF CODES,  
RULES AND REGULATIONS OF THE STATE OF NEW YORK - THE  
STATE SUPERFUND PROGRAM, THE BROWNFIELD CLEANUP PROGRAM,  
and THE ENVIRONMENTAL RESTORATION PROGRAM and the  
DEPARTMENT'S DRAFT GENERIC IMPACT STATEMENT

HEARING REPORT

- by -

\_\_\_\_\_/s/\_\_\_\_\_  
Helene G. Goldberger  
Administrative Law Judge

\_\_\_\_\_/s/\_\_\_\_\_  
Susan J. DuBois  
Administrative Law Judge

April 19, 2006

## PROCEEDINGS

### Background

The New York State Department of Environmental Conservation (DEC or Department) in collaboration with the New York State Department of Health (DOH) has been working on draft regulations to amend Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) for approximately two years. These regulations are being promulgated pursuant to the Brownfield Clean-Up and Superfund Refinancing legislation that was enacted in 2003 (L. 2003, ch. 1), and amended in 2004 (L. 2004, ch. 577). See, Environmental Conservation Law (ECL) § 27-1401, *et seq.*

### Notice of Public Hearings

The Department provided public notice of these legislative hearings by publishing notices in the November 16, 2005 on-line *Environmental Notice Bulletin*, and the November 16, 2005 editions of *New York Newsday*, *Albany Times Union*, and *Rochester Democrat and Chronicle*. In accordance with these notices, public hearings were held as follows:

Administrative Law Judge Helene G. Goldberger  
Monday, March 6, 2006 - 1:00 p.m.  
CUNY Graduate Center Recital Hall  
365 5<sup>th</sup> Avenue  
New York, NY

Administrative Law Judge Susan J. DuBois  
Thursday, March 9, 2006 - 1:00 p.m.  
Monroe Community College, Brighton Campus  
R. Thomas Flynn Campus Center  
Building 3, Monroe Rooms A & B  
1000 E. Henrietta Road  
Rochester, NY

Administrative Law Judge Susan J. DuBois  
Wednesday, March 15, 2006 - 1:00 p.m.  
NYSDEC - Public Assembly Room 129 A & B  
625 Broadway  
Albany, NY

In addition to the public hearing sessions, the notices provided that written comments would be accepted by DEC through March 27, 2006. As of the writing of this report, DEC has posted on its web site a notice that it intends to issue a revised draft of the amended regulations for a second public comment period in the summer of 2006.

Public Hearings

New York City Hearing Session

At the March 6, 2006 hearing session in Manhattan, DEC staff was represented by James Harrington, P.E., Chief of the Training and Technical Support Section, Bureau of Technical Assistance, Division of Environmental Remediation. Approximately fifty people were in attendance at this hearing and in addition to DEC staff, 22 people spoke. All the speakers represented organizations, community groups, or organized segments of the public. Speakers came from all the boroughs of New York City (with the exception of Staten Island).

Department representative James Harrington spoke first to provide a summary of the proposed amendments. He explained that the Department drafted the regulations in response to the brownfields legislation that was signed into law by Governor Pataki in October 2003 and amended in 2004. He stated that the brownfields law refinanced and reformed the State Superfund program and created the brownfield cleanup program. Since the law's passage, Mr. Harrington explained that DEC has been administering and implementing the new programs. He further stated that these programs provide for the investigation and remediation of contaminated sites throughout New York State by volunteers, municipalities, and the parties responsible for the contamination. While the programs have a similar framework for cleanups, there are some unique aspects for each program.

Engineer Harrington stated that the revisions are intended to clarify and streamline the current regulations and to address issues raised by program stakeholders. It is the Department's position that this proposed rule will facilitate the cleanup and reuse of contaminated sites that will result in economic revitalization, while also protecting public health and the environment. He summarized the specific amendments as follows:

Subpart 375-1: General Remedial Program Requirements. This subpart identifies those requirements which are common to each of the remedial programs. It incorporates the statutory changes since the previous Part 375 rulemaking, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Subpart 375-2: Inactive Hazardous Waste Disposal Site Remedial Program (State Superfund Program). This subpart

maintains, but reorganizes and restructures, much of the existing Part 375. These rule changes conform to the recent statutory changes and provide for greater consistency with other remedial programs.

Subpart 375-3: Brownfield Cleanup Program. This subpart is new and implements recent changes to the law which created the BCP.

Subpart 735-4: Environmental Restoration Program. This subpart conforms the existing Subpart 375-4 to recent changes in the law and provides for some modest changes to increase consistency between the remedial programs. This rule maintains, but reorganizes and restructures, much of the existing Subpart 375-4, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Mr. Harrington concluded his remarks by noting that while there had been requests to extend the public comment period, March 27, 2006 remained the deadline for receipt of comments. As noted above, the Department is now planning revisions to the regulations and another comment period.

At the conclusion of Mr. Harrington's remarks, ALJ Goldberger called upon members of the public who wished to speak starting with New York City Councilman James F. Gennaro. The majority of the comments at this public hearing came under two overarching concerns. The first was the described over-restrictive nature of the regulations that would foreclose public projects from benefitting from the brownfields program and the need to make the tax credits accessible to community-based public-purpose redevelopment projects. The second major issue addressed by many of the commenters was the view that the regulations were under-restrictive in terms of the levels of clean-up required.

Councilman Gennaro's statement reflected the first area of concern. Councilman Gennaro explained that in 2005 the City Council passed a resolution in support of the brownfield opportunity area (BOA) grants. The Council saw this program as one that would assist the City in addressing needs for affordable housing, community facilities, open space and job-creating businesses. He expressed the view that facilitating community-based public-purpose projects was key to revitalization of the City. The Councilman stated that he was troubled by exclusion of moderately contaminated parcels from the regulation's reach. He explained that these sites are often those that would be best suited for community-backed,

public-purpose redevelopment projects - exclusion means no tax breaks thus denying essential funding. Councilman Gennaro recognized that it was necessary for the State to prevent developers from "abusing the program" but urged the Department to support publicly beneficial projects by: 1) eliminating the brownfield cleanup program's restrictions for moderately contaminated sites for public purpose projects and relying on common-sense proven mechanisms such as profit caps to ensure that developers did not reap windfall profits from the tax credits; and 2) supporting community-backed, public purpose projects by adjusting the brownfield tax credit formula so that it incorporates financial need, cleanup costs, and socio-economic conditions of neighborhoods home to brownfields.

The Councilman provided that New York City was home to an estimated three to four thousand acres of brownfields - sites that burden the "health and vitality" of the communities in which they exist. His comments which were echoed by many of the other speakers stressed that aspects of the regulations will obstruct development of these sites in New York City because they are too stringent with respect to groundwater and historic fill. He commented that the regulations also fail to address soil vapor mitigation and removal which is a significant problem in New York City. Councilman Gennaro concluded by asking that the regulations be "re-worked to eliminate these obstacles." and "convene an Urban Center Advisory Committee" to develop regulations that more "clearly and effectively address the unique circumstances associated with urban settings."

Jae Watkins, the Environmental Justice Coordinator for UPROSE, an advocacy organization representing Southwest Brooklyn, pointed to the many environmental burdens of her community - the Gowanus Expressway, power plants, industrial uses, brownfields, lack of open space and programs for youth. She pointed to the many negative results of these impacts such as juvenile diabetes and asthma. Ms. Watkins spoke about the efforts to make a greenway that would provide access to the water. She contended that the brownfields program could be an asset that would assist in this community's endeavors. Like the Councilman who spoke before her, Ms. Watkins agreed that while there was understandably a need to restrict tax credits to minimize abuse, the restrictions in the regulations will result in displacement. She stressed the need to provide avenues for affordable housing developers and that the credits should be based upon the financial need of a project and the benefits to a community. Ms. Watkins urged the Department to ensure that the regulations address the needs of all communities - urban and non-urban.

Robert Kulikowski, the Director of New York City's Office of Environmental Coordination (OEC) commended DEC for the great effort that went into developing the soil cleanup objectives (SCOs) and the draft regulations. He echoed the sentiments of the City Councilman by stating that the draft regulations were too restrictive as to what constitutes a brownfield - requiring "confirmed contamination" or "a reasonable basis to believe that contamination is likely to be present." He concludes that these definitions conflict with the statute's goal "to encourage cleanup and redevelopment of brownfield sites." Director Kulikowski expressed the view that the draft regulations mistakenly treat historic fill sites with less importance than other contaminated sites although such areas may contain contamination that is equal to or greater than what exists at non-historic fill sites. On this point he expressed additional concern regarding the lack of clarity of the draft regulations with respect to these sites as he observed that, other than inclusion in the definitions section, the term "historic fill material" was not used in the draft Part 375. He asked that there be clarification of this term in the regulations or that it be stricken.

With respect to groundwater, it is OEC's position that provisions in the draft regulations impose an unfair burden on applicants to address upgradient groundwater contamination. This requirement, according to Mr. Kulikowski, would make brownfield cleanup program applicants responsible for contamination caused by third parties and/or on another property. He maintained that the volunteers should only be responsible for ensuring that on-site contamination does not "materially worsen the groundwater contamination exiting their sites." Mr. Kulikowski argued that it was the Department's responsibility to pursue the parties responsible for contamination and where these parties could not be located, to use State funds to address "significant threat plumes entering an applicant's site." On similar grounds, he stated that applicant's responsibilities with respect to ubiquitous groundwater contamination should be limited to addressing contamination in excess of background groundwater contamination.

Mr. Kulikowski expressed concern regarding lack of clarity as to whether the proposed SCOs would apply to non-brownfield cleanup program sites. He stated that these standards should be used for example in Superfund cleanups when it is infeasible to attain pre-disposal conditions. Overall, OEC is satisfied with the proposed SCOs although Mr. Kulikowski stated that the values for the seven PAHs that are considered potential carcinogens may be too stringent and urged that the Department develop standards

that are more realistic for these contaminants but that do protect public health. He also asked that the Department eliminate the distinctions between the brownfield regulations and the construction and demolition debris disposal requirements in Part 360. Mr. Kulikowski explained that sampling of brownfield sites may reveal the presence of contaminants in excess of the SCOs or Technical Administrative Guidance Memorandum (TAGM) 4046 despite the absence of evidence of prior spills or releases. The Part 360 regulations prevent the applicant from reusing the material in such circumstances thus adding to the costs of remediation. As a potential solution, Mr. Kulikowski asks that a beneficial use determination be used for this type of material generated at brownfield sites.

Mr. Kulikowski also asked that the Department not exclude single family housing from the "restricted residential" category stating that appropriate deed restrictions would be adequate to protect against inappropriate uses. He also questioned the logic of excluding restricted-industrial end uses from the restricted-commercial and restricted-residential end use categories because the SCOs for the two latter categories are more protective of public health and the environment. Thus, end-use categories with more protective SCOs should allow uses from end-use categories with less protective SCOs. He pointed to local land use and zoning as the appropriate jurisdiction in these instances. Mr. Kulikowski pointed to other instances in the draft regulations of confusing examples and vague references with respect to the various uses. As a last point, he criticized the draft regulation's inclusion of protection of ecological resources concluding that there was insufficient demarcation of the scope of this goal.

Jody Kass and Mathy Stanislaus of New Partners for Community Revitalization, Inc. emphasized that the brownfields cleanup program represents a unique opportunity to meet many important community needs such as affordable housing, jobs, educational and community facilities, waterfront access, and open space that are increasingly difficult to locate because of rising real property values in New York City. New Partners stressed that the market place is not the best means to develop sustainable, diverse, and healthy neighborhoods. This group stressed that with these regulations, the Department is stepping into areas outside of its traditional roles of strict environmental regulation and protection as the issues of community development are so intertwined with the brownfields issues.

As stated by many other speakers, New Partners recommended that with respect to groundwater contamination, applicants should

use the SCOs for protection of public health to guide on-site source removal. Further, the remedy used for groundwater remediation should be designed for the purpose of controlling contamination contributed by the site to the groundwater.

With respect to SCOs, New Partners stated that the regulations should specify when a contaminant is not listed in the "look up table", the applicant should be allowed to evaluate the existing site data to determine whether the contaminant should require a more stringent level of clean-up than that which would be based on existing SCOs. If so, the volunteer can use TAGM 4046 or develop an SCO in accordance with existing technical guidance.

New Partners maintains that the Department must reevaluate whether the same SCOs should be used for arsenic and benzo(a)pyrene under all Track 1 and Track 2 scenarios.

New Partners agreed with the concerns expressed by the City's OEC that the definition of ecological resources must be made more precise as currently it is so broad that applicants will not be able to identify whether and how to address these concerns.

New Partners criticized the draft regulation's failure to address soil vapor specifically and recommends that the regulations specify how such mitigations fit into the Track cleanups.

As stated by many others, New Partners stressed the need for the regulations to include moderately contaminated sites in the program and to administer tax credits so that the financial needs of a project, the cost of clean-up and the public benefits are considered. Finally, New Partners also urged that DEC convene an Urban Center Advisory Committee to examine these issues so that "a reasonable framework for these sites [is developed] that encourages cleanup and redevelopment.

Ms. Stephanie Tatham, speaking on behalf of Environmental Defense, stressed that the program should foster investment in urban areas. Environmental Defense argued that aspects of the draft regulations will encourage development outside of urban areas. Ms. Tatham urged that tax credits should not be used for areas that are in already desirable communities. Environmental Defense found the draft regulation's provisions on groundwater unclear and recommended that the standards for lead, PCBs, and cadmium were too high.

Ajamu Kitwana and Anthony Thomas of Youth Ministries for Peace and Justice, a community organization focused on open space, environmental justice and cleaning up the neighborhood of the South Bronx, spoke about the difficulties this group met when it sought to clean up a park adjacent to the Bronx River due to the discovery of a manufactured gas plant on the site. These speakers stated that the Department permitted Con Ed to leave this plant but for those seeking to clean-up there were disposal difficulties due to contamination. Messrs. Kitwana and Thomas asked for effective public participation, adequate cleanup, and planning that benefits local communities. They made the point that in the case of the park, had there been more effective communication with the community, much time and resources would have been saved in order to reach a beneficial resolution.

Linda Shaw, Esq. urged that contaminated sites would only attract developers if the process was not burdensome. She stressed that the Brownfields Law was a compromise and that the cleanups required must be realistic - site by site - source area by source area.

The comments of NYPIRG fell mainly into the second category of concerns expressed by many of the speakers. Joel Kelsey stated that the draft regulations fail to provide for permanent and complete cleanup of toxic contaminants in the thousands of sites that exist in New York. NYPIRG seeks a complete rewriting of the regulations so that they "are truly protective of public health and the environment." Mr. Kelsey expressed the view repeated by other speakers that the nature of the ultimate land use should not be a factor in selection of the cleanup remedy. While noting that the draft regulations retain language from the former Part 375 regulations that the goal of remediation is to restore a site to "pre-disposal conditions, to the extent feasible", he noted that the draft regulations call for "use-based cleanups." NYPIRG contends that because the law requires "complete cleanup" for Superfund cleanups, use-based standards are inappropriate for any remediations under the Superfund program and should be deleted from the regulations.

NYPIRG criticized the draft regulations for not specifying cleanup standards for Superfund sites. Mr. Kelsey explained that it appeared that the Department plans to use the use-based SCOs that are included in the Brownfields law. Because NYPIRG finds that these SCOs are not protective of public health and the environment and are weaker than the standards in place now for Superfund remediations (TAGM 4046), Mr. Kelsey stated that these standards are inadequate.

Mr. Kelsey also provided that many of the public participation, notice and reporting requirements contained in the current Superfund Part 375 regulations have been removed from the draft regulations. NYPIRG argued that the regulations should provide for public participation as early as possible in the remediation processes and that there be opportunities for meaningful dialogue among the volunteer, the public, and the Department.

Finally, NYPIRG reiterated the request that the comment period on the draft regulations be extended 120 days due to the complex nature of the regulations and the thousands of pages of technical supporting documents. Mr. Kelsey also requested that the Department hold additional public hearings in other parts of the state so that there was greater access.

Ellen Z. Harrison, Director of the Cornell Waste Management Institute of Cornell University, maintained that the proposed groundwater SCOs are reasonable for many situations and chemicals but insufficiently protective for some. She maintained that in some instances the SCOs may be 10-100 times higher than concentrations that would protect people from exposure through vapor intrusion. She expressed the view that the industrial land use SCO would not protect exposures for people doing construction and that there could be day care centers on industrial sites that would be insufficiently protected. Ms. Harrison specified that the standards for cadmium and arsenic were too high. She also argued that activities in residential uses such as farming, gardening, and other outdoor exposures would potentially expose people to dangerous levels of toxics. And, Ms. Harrison, like many others, argued that it would be virtually impossible to enforce restrictions on gardening and similar activities thus allowing for potentially dangerous exposures.

Kizzy Charles-Guzman, of West Harlem Environmental Action (WE ACT), stated that the regulations were not protective of public health. She stressed the need for protection of workers, children, and sensitive populations.

Dr. Nathan Graber, a Fellow at Mount Sinai School of Medicine's Departments of Pediatrics and Community and Preventative Medicine spoke at length about the relationship of toxic chemicals in the environment that cause disease in children. He emphasized the heightened sensitivity of children to environmental toxins. Based upon these factors he urged that more consideration be given to the vulnerabilities of children in settings SCOs. Dr. Graber maintained that the land categories were unrealistic because the ability to monitor and enforce

restrictions of these uses is not viable. He urged that the most up-to-date information on chemical toxicity be used to set soil cleanup standards. Dr. Graber recommended that all of the toxicity values used be reevaluated "to account for children's increased susceptibility to the adverse health effects of contaminants in their environment." Because background levels of pollutants can still represent a health threat, he argued that soil cleanup standards should not be based on such levels. He urged extreme caution and a more protective approach in setting standards. Dr. Graber found that the synergistic effects of pollutants was not considered in setting standards and recommended that the interaction profiles published by the Center for Disease Control's Agency for Toxic Substances and Disease Registry be consulted to derive SCOs for sites with mixtures of contaminants.

Marlene Donnelly of Friends and Residents of Greater Gowanus (FROGG), a community organization based in the neighborhoods surrounding the Gowanus Canal, spoke to the need for adherence to public participation requirements in cleanups. She spoke specifically about projects that have been ongoing in her community and which the community members are unable to find information. Ms. Donnelly stated that information is not in the public repositories - libraries are not functioning properly for this purpose and community boards are a better location. She spoke of the Whole Foods project in her community that has resulted in the addition of polluting material into the Gowanus Canal - a polluted waterway that FROGG is working towards cleaning up. She maintains that this project and others are causing the community's additional exposure to contaminants without their knowledge and participation. Ms. Donnelly stated that the regional office often directs inquiries to DEC Central Office that has little oversight of the projects.

In addition to the comments summarized above, statements addressing the stringency of the regulatory scheme, the need to use the program to revitalize communities, the adequacy of the clean-up standards and combinations of these concerns were also made by: Albert Huang of the Natural Resources Defense Council; Bette Stoltz of FROGG/SBLDC; Shirley Siegal, Natural Resources Director of the League of Women Voters of Nassau County; Rachel Dubin, Southwest Brooklyn Industrial Development Corp.; Mike Schade, Campaign Coordinator of the Center for Health, Environment and Justice; Joel Kupferman, Executive Director of New York Environmental Law and Justice Project; Joan Byron, Director, Sustainability and Environmental Justice Initiative, Pratt Center for Community Development; Samara Swanston, Environmental Justice State Chair, Sierra Club; Michelle DeLauz,

Executive Director, Fifth Avenue Committee, Inc.; and Brian Segel, New York Director, Low Income Investment Fund.

The New York City hearing concluded at approximately 5 p.m.

Rochester Hearing Session

Approximately 25 members of the public attended the hearing session that occurred on the afternoon of March 9, 2006 at Monroe Community College, Rochester. In addition to DEC Staff, eight persons spoke at this hearing session.

Department representative James Harrington presented a summary of the proposed amendments at the start of the hearing, as described above for the New York City hearing. He also noted that the Department had received requests to extend the comment period. He stated that these requests were being considered but a decision had not yet been made. Mr. Harrington stated that should a decision be made to extend the comment period, the extension would be posted on the Department's web site with the regulations but that in the absence of this posting the comment period would close on March 27, 2006.

Representatives of NYPIRG, Citizens Environmental Coalition (CEC), and the Sierra Club asked that the comment period be extended and that hearings be held in additional locations, particularly in Western New York and the Southern Tier.

Tim Sweeney, of Environmental Advocates of New York, noted the negotiation process that led to the brownfield legislation, and stated that although Environmental Advocates saw use-based cleanups as the most practical approach to brownfield remediation, the organization was troubled by the regulations, particularly the soil cleanup objectives and the approach for determining eligibility for tax credits. Regarding tax credits, Mr. Sweeney stated that tax credits should be used for sites that would not be cleaned up and redeveloped in the absence of tax credits, through developing an eligibility test based on the cost of cleanup, the socioeconomic conditions of the site's area, and the likelihood of remediation occurring in the absence of tax credits. He noted this is a concern in upstate cities as well as in New York City.

Mr. Sweeney stated that the statute requires DEC to establish three land-use based soil standards (unrestricted, commercial and industrial) but that the regulations would establish six standards. He criticized this proposal in a number of respects, including that restrictions on farming or gardening

are not authorized by the statute, could not be enforced (by DEC "policing vegetable gardens") and, with regard to multiple-unit dwellings, are an environmental justice concern due to the likely impact on low income and minority populations. Restrictions on gardening were criticized by several speakers at the Rochester and Albany hearings.

Environmental Advocates recommended that the requirements for off-site testing and cleanup be strengthened, to identify DEC's role in facilitating timely off-site cleanups. Environmental Advocates asserted that there is enough scientific information available to address vapor intrusion as part of remedial investigations. Mr. Sweeney also stated that the regulations should include requirements to ensure the reliability of engineering and institutional controls, and should establish a system for communication between local governments and DEC about future activities on sites where such controls are used.

Melinda Sobin, of NYPIRG, spoke at the Rochester hearing and stated that New York State's cleanup standards for industrial sites are weaker than those of New Jersey, Massachusetts or Connecticut. She stated that DEC and DOH did not follow the requirements of the Brownfields Law in developing SCOs based upon future land uses. Among other concerns, Ms. Sobin stated that although the statute requires the unrestricted use standards to protect both public health and environment, the regulations contain two separate standards for public health and for protection of ecological resources. Two other speakers expressed a similar concern at the Rochester hearing, as did three speakers at the Albany hearing.

Theresa Cassiack, Legislative Associate for the Atlantic Chapter of the Sierra Club, stated that the proposed regulations rely too heavily in engineering and institutional controls, such as paving over contamination or restricting use of groundwater, and questioned the long-term reliability of these measures. She stated that the draft regulations weaken the state Superfund program by deleting existing provisions for public participation and by allowing land use to be considered in Superfund cleanups in contrast to Superfund's preference for restoring to pre-disposal conditions.

Joseph Gardella, Jr., Professor of Chemistry at the State University of New York at Buffalo, noted that in upstate urban areas, abandoned industrial sites are traditionally surrounded by still-occupied housing, and stated that guidance is necessary about how to take this into account in dealing with brownfields, particularly with regard to contaminated soil blowing into

residential areas. He criticized the proposed standards for arsenic and lead and compared them with standards used in other contexts. He stated that use of site background levels in contaminated areas can cause inadequate remediation, violating the principles of environmental justice. Mr. Gardella recommended that DEC's environmental justice policies and the Department of Health's public participation policies be taken into account in revising the amendments to part 375.

Nicole Kelley, M.S.W., of the Learning Disabilities Association of Western New York, stated that there is a direct connection between toxin exposure and developmental disabilities, as well as other disabilities and illnesses. She noted that one in six children is diagnosed with a developmental disease, and she stressed the importance of prevention. Kerri Kaminsky, R.N., a Sierra Club member speaking as an individual, stated that she was speaking to put a face on the issue and had become involved due to her work with children who have cancer.

Lindsay Marlow, Program Associate in the Buffalo office of Citizens Environmental Coalition, and Karen Schwartzman, a resident of Fairport, stressed the need for improved public participation and public information. Ms. Marlow stated that the proposed amendments to Part 375 provide for less public participation than under the existing regulation. She criticized the idea of making brownfield and superfund site data available only on the DEC web site and not on paper, as well as decreased access to the inactive hazardous waste disposal site registry, and urged that the proposed Part 375 regulations not be "another step down this slippery slope of e-discrimination" for citizens who lack internet access. She recommended using site contact lists that would be similar to those under the existing regulation and more extensive than under the proposed amendments. Ms. Schwartzman noted that the public cannot tell if a site is a brownfield if no signs are posted at these sites and if no list of sites is available. She recommended that the regulations include requirements for signage.

#### Albany Hearing Session

Approximately 47 members of the public attended the hearing session that occurred at the DEC central office in Albany on the afternoon of March 15, 2006. In addition to DEC Staff, 17 persons spoke at this hearing session. At the start of the hearing, Mr. Harrington reiterated the statement about the proposed amendments and the question of extending the comment period. Seven organizations who presented statements at the

Albany hearing supported extending the comment period, by times ranging from a brief extension to 120 days.

Representatives of New Partners for Community Revitalization, Inc., NYPIRG, CEC, and the Sierra Club presented statements at the Albany hearing, in addition to speaking at one or both of the earlier hearings. Supplementing its earlier statements, NYPIRG stated that basing background levels of soil contamination on soils in a polluted neighborhood would legitimize leaving highly-polluted surface soils and that this is not authorized in the law. NYPIRG also noted that it had submitted a Freedom of Information Law request for records concerning development of the proposed amendment but had not yet received a response from DEC, nor from DOH. CEC criticized certain assumptions about exposure and background levels that DEC used in developing the proposed regulation.

Two speakers focused primarily on vapor intrusion, recommending that the regulations require more on this subject. Lenny Siegel, of the Center for Public Environmental Oversight, recommended that vapor intrusion screening be required for sites where volatile organic compounds are known or are likely to be present. He also recommended that vapor intrusion investigations be done before construction starts, and stated that public participation is especially important in dealing with vapor intrusion because it involves monitoring and mitigation within people's homes.

Debra Hall spoke about her experiences with the Hopewell Precision federal Superfund site, and stated that DEC delisted the site despite a recommendation from the NYS Department of Health about further testing of an area allegedly contaminated with solvents. She stated that vapor intrusion was later discovered by the EPA, and she described certain complications that can affect testing for vapor intrusion. Ms. Hall recommended strengthening the requirements concerning soil clean-up and vapor intrusion.

Ken Pokalsky, Director of Environmental Programs for the Business Council of New York State, described the brownfield program as not being a trade-off between complete cleanups and less-complete cleanups, but instead as being a choice between a risk-based cleanup and no cleanup at all. He stated that the 2003 brownfield legislation is one of the most environmentally stringent and procedurally arduous brownfield programs in the nation, with the most valuable redevelopment tax credits offered by any state, and that the DEC had developed workable use-based objectives. The Business Council's comments expressed concern

about adopting general provisions that would apply to all three remedial programs (brownfields, Superfund and municipal remediation) and discussed several distinctions between Environmental Conservation Law article 27, title 13 (Inactive hazardous waste disposal sites) and ECL article 27, title 14 (Brownfield cleanup program). These distinctions relate to thresholds for cleanup liability, the definition of a contaminant source, goals for cleanup, and financial assurance requirements. The Business Council also stated that the proposed regulations fail to incorporate the full range of brownfield project review timetables that are in the statute and do a poor job of incorporating the statute's permit waiver provisions.

Damien Vanetti, of S&W Redevelopment of North America, a company engaged in redevelopment of brownfields, described the proposed cleanup standards as high but achievable. He stated that outside New York City, the land values are not high enough to sustain "pristine" cleanups. Mr. Vanetti stated that it is unreasonable to expect site owners to prevent contamination from off-site sources from migrating onto their properties, and stated that the responsible party or the Department should remediate the other site. He presented specific recommendations about modifying a number of sections of Subpart 375-1.

John Schnebly spoke about his proposal for redeveloping the King Fuel site in Troy, stating that it would be expensive to clean up the site to a level appropriate for children being outdoors eight hours a day. He stated that he had made a proposal to the DEC and the City of Troy to do a cleanup that he described as a compromise, and he asked that a decision be made quickly about what is required.

The New York State Chapter of the National Brownfield Association was represented by Treacy Sayres, who presented comments on behalf of the chapter's Policy, Legislative and Technical committees. These comments included revising and clarifying certain definitions (among them "historic fill"), changing an appeal process, approving portions of sites for inclusion in the brownfields program, and making language about indemnification be consistent with the statute. Ms. Sayres also stated that the ecological soil cleanup objectives (ESCOs) are based upon an Environmental Protection Agency method to derive screening levels and that DEC's modifications of this information were not sufficient to change screening values into cleanup values. She stated that the benchmarks used by DEC were generally accepted as screening values but not as cleanup values.

Anne Rabe, Campaign Coordinator with the Center for Health, Environment and Justice, stated that the compromise to include use-based cleanup categories in the brownfields law also included a clear preference for permanent cleanups, but that the proposed regulations instead include a "bizarre menu" of six different standards for each chemical and undermine the preference for safe, permanent cleanups. She stated that the regulations weaken Superfund's cleanup goal by including, in the Superfund regulations, land use considerations not authorized by the Superfund law. With regard to off-site contamination, Ms. Rabe stated that the regulations are unclear about the roles of DEC, polluters and volunteer developers, and omit the state's role in ensuring comprehensive cleanups, in contrast to the requirements of ECL sections 27-1411 and 27-1415.

Ms. Rabe and several other speakers at the Albany hearing recommended that the public participation aspects of proposed Part 375 be enhanced. Among these recommendations were that Part 375 should include the public participation goals that are in the brownfields and Superfund statutes, that citizen involvement should occur as early as possible in the decision making process, that site contact lists should include adjacent property owners and community groups, and that DEC should return to the practice of marking hazardous waste sites with conspicuous signs and providing lists of such sites. These subjects were discussed by: Ms. Rabe; Kelly Travers-Main, on behalf of United Neighbors Concerned About General Electric and the Dewy Loeffel Landfill (UNCAGED); Christine Vanderlan, a resident of the Town of Schodack; Rich Schiafo, of Scenic Hudson; Jim Travers, of Selkirk-Coeymans Ravine Against Pollution (SCRAP); and Beth Grundfest, a Rockland County resident.

Jackie Hayes and Sheila Carbrey, residents of Syracuse and Williamsville, respectively, cited contaminated areas where numerous cancers occurred, and both speakers urged that the regulations protect public health.

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Transcripts of these hearings were delivered to the Office of Hearings and Mediation Services on March 30 and April 3, 2006 and are being returned to DEC Staff with this report.